

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
DAMIAN PRIOUR (ARTIST)
FOR

FRISCO POLICE HEADQUARTERS PUBLIC ART PROJECT (PROJECT)

Made as of the _____ day of _____ in the year Two Thousand Ten:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Artist: 17120 Hamilton Pool Road
Austin, Texas 78738
Telephone: (512) 264-2008
Facsimile: (512) 264-2080

for the following Project: **Frisco Police Headquarters Public Art Project**

The City and Artist agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the City of Frisco, Texas, a Home-Rule Municipal Corporation, hereinafter referred to as the "City," and Damian Priour, hereinafter referred to as "Artist," to be effective from and after the date as provided herein the "Amendment Number One."

WHEREAS, the City and Artist entered into that certain Agreement for artistic services for the Frisco Police Headquarters Public Art Project, dated May 10, 2005, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as the "Agreement;" and

WHEREAS, the City and Artist desire to amend the Agreement for the purpose of amending the Scope of Services and Schedule of Work provisions set forth in the Agreement; and

WHEREAS, the City and Artist desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Artist do mutually agree as follows:

1. **Amendment to Agreement, Article 1, Section 1.2, Scope of Services.** Article 5, Section 1.2 of the Agreement is hereby amended as follows:

"1.2 **Scope of Services** – The parties agree that Artist shall perform such services as are set forth and described in Exhibit "A" **and Exhibit "A-1"**, which is **are** attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A" **or Exhibit "A-1"**, in the form of written change orders, may be authorized from time to time by the City."

2. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work.** Article 5, Section 1.3 of the Agreement is hereby amended as follows:

"1.3 **Schedule of Work** – The Artist agrees to commence work immediately upon execution of this Agreement and receipt of first payment, and to proceed diligently with said work to completion as described in the Completion Schedule/Project Billing/Project Budget attached hereto as Exhibit "B" **and Exhibit "B-1"** and incorporated herein by reference for all purposes."

3. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Artist's Services.** Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Artist's Services** - As described in "Article 1, Artist's Services", compensation for this Project shall be **One Hundred, Eighty-Eight Thousand, Ninety-Five and No/100 Dollars (\$188,095.00)** ("Artist's Fee") and will cover all services to be rendered and materials to be provided. The Artist's fee shall be paid in accordance with Article 3 and the Completion Schedule/Project Billing/Project Budget as set forth in Exhibit "B" **and Exhibit "B-1"**, attached hereto and incorporated herein for all purposes. The final **Fifteen Thousand, Nine Hundred Ninety Eight and 75/100** of the Artist's Fee shall not be paid until the City

has received payment from the insurance company for the wind damage, as described in **Exhibit "B-1".**"

4. **Amendment to Agreement, Article 3, Section 3.2, Invoices.** Article 3, Section 3.2 of the Agreement is hereby amended as follows:

"3.2 **Invoices** -- No payment to the Artist shall be made until Artist tenders an invoice to the City. Payments are payable to the Artist within thirty (30) days from the date of invoice as long as the invoice is mailed to City within three (3) days of the date of the invoice. Invoices are to be mailed to City immediately upon completion of each individual task listed in Exhibit "A" **and Exhibit "A-1"**. If any invoice remains outstanding and unpaid for more than sixty (60) days from the date of invoice, and Artist has fully performed its obligations as set forth herein, the Artist has the option upon written notice to the City, to suspend all work specified under this Agreement until the account is brought current. Continued performance and/or completion of work by the Artist under this Agreement shall resume upon the payment of the earned fees by the City."

5. **Amendment to Agreement, Article 4, Section 4.1, Ownership of Work.** Article 4, Section 4.1 of the Agreement is hereby amended as follows:

"4.1 **Ownership of Work** -- The Project is the property of the City, and the Artist shall not make any duplicate work of the same or substantially similar size, nor shall the Artist grant permission to others to do so except with the written permission of the City of Frisco. The City shall be entitled to copies of the plans and the maquette, which are prepared by the Artist in connection with the development and fabrication of the project under this Agreement. The ownership of the sculpture is transferred to the City upon full payment of artwork described in Exhibits "A" and "B" **through "B-1"** attached hereto."

6. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto and labeled "A-1" and "B-1", both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereto and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended, supplemented and/or modified except by written agreement duly executed by both parties. Exhibits "A-1" and "B-1" are attached hereto and made a part of the Agreement.

7. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
8. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
9. **Defined Terms/Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement.
10. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
11. **Entire Agreement.** This Amendment Number One and the Agreement embody the entire Agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof. This Amendment Number One may only be amended by written agreement duly executed by all parties hereto.
12. **Venue.** The Agreement and this Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
13. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.
14. **Appropriation of Funds.** Funds are not presently budgeted for City's performance under this Amendment Number One beyond the end of the City's 2009-2010 fiscal year. City will give Artist sixty (60) days notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2009-2010 fiscal year unless and until such funds are budgeted.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]


IN WITNESS HEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

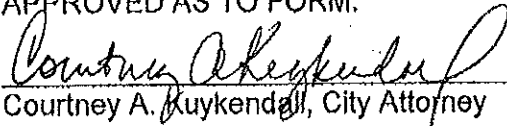
CITY
The City of Frisco, Texas

ARTIST
Damian Priour

By: _____
Name: George Purefoy
Title: City Manager

By: 
Title: Artist

APPROVED AS TO FORM:


Courtney A. Ruykendaal, City Attorney

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2010.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF _____:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **DAMIAN PRIOUR**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS _____ DAY OF _____, 2010.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

My commission expires: _____

EXHIBIT "A-1"
SCOPE OF SERVICES

**Amendment Number One to an Agreement
by and between the City of Frisco, Texas (City)
and Damian Priour (Artist)
to perform Additional Repair and Improvement Services for
Frisco Police Headquarters Public Art Project**

Project Description (cont.)

The stone and glass sculpture will be repaired with industrial glass turned on its smooth polished edges and will be anchored by the two (2) existing large limestone shapes made of 60 million year old fossil stone quarried in central Texas. The wall of glass will be up to ten feet (10') tall, not including the base. Loctite U.V.349 adhesive will be used to bond the glass wall together. Loctite U.V. adhesive is a one-part medium viscosity adhesive with an ultraviolet cure system. Tough, durable bonds can be formed with excellent adhesion to glass, stone, wood, metal and some thermoplastics. Strength retention on exposure to moisture or humidity is excellent. When cured, it also has a high degree of general environmental durability and resistance to discoloration on aging. Cured adhesive temperature resistance is -65 to 266 degree Fahrenheit (-54 to 130 degree Celsius).

Additionally, four stainless steel bands, two (2) on each side of the wall of glass will be embedded into each end of the stone columns and bolted together in eight (8) places along the band. Non-visible rubber padding will be placed between the band and the glass. The stainless steel banding will be custom forged to follow the lines of the glass. It will be made of one inch (1") diameter stainless steel and will become an aesthetically pleasing and appropriate support for the glass. The names of fallen police officers will be etched into the edge of the glass as a memorial. There is currently only one name.

EXHIBIT "B-1"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

**Amendment Number One to an Agreement
by and between the City of Frisco, Texas (City)
and Damian Priour (Artist)
to perform Additional Repair and Improvement Services for
Frisco Police Headquarters Public Art Project**

Completion Schedule and Project Billing (cont.)

TASK	DESCRIPTION	PAYMENT	DEADLINE
6	Execution of Amendment Number One and Notice to Proceed. City receipt of list of subcontractors and insurance documentation. Stamped engineer drawings regarding wind loads submitted to the City. Materials ordered upon receipt of payment #1.	42,996.25	April 30, 2010
7	All materials, including glass, stone, and stainless steel, have been cut, polished, fabricated and processed. Components have been fitted together temporarily to insure accurate installation. Photo documentation of final fabrication and temporary assembly submitted to City. Components disassembled, cleaned and prepared for shipping to site. Schedules confirmed for equipment rental and installation crew to the site. Sculpture materials delivered to site. Delivery of materials, uncrating and installation of sculpture on site, clean up. Final acceptance by Project Manager.	15,998.75	August, 31, 2010, and upon payment to the City from the insurance company for the wind damage.
	TOTAL	\$188,095.00	